IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5813 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TRIVEDI LALSHANKER SHIVPRASAD

Versus

BAHUCHARAJI TEMPLE TRUST

Appearance:

MR UI VYAS for Petitioners

MR GIRISH D BHATT for Respondent No. 1 & 2

NOTICE SERVED BY DS for Respondent No. 3 & 4

MR SB BRAHMBHATT for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/07/2000

ORAL JUDGEMENT

The petitioners herein, 25 in number, have challenged the resolution dated 30.1.1999 passed by the Bahucharaji Gram Panchayat by which the Gram Panchayat had resolved to remove the encroachments from Bahucharaji village. The petitioners apprehend that in the course of implementation of that resolution, the respondents

including the trustees of Bahucharaji Temple Trust, their administrator, Collector, Mehsana, District Development Officer, Mehsana and the Bahucharaji Gram Panchayat may demolish the shops of the petitioners though the shops were let out to them and the petitioners are tenants. Hence, the petitioners cannot be evicted except in accordance with law. The petitioners have also pointed out that earlier many of them had filed suits and all of them had succeeded before the District Court, Mehsana and the respondents were restrained from dispossessing the plaintiffs from the suit shops without following the due process of law. Of course, the appeals filed by the Trustees being Second Appeal Nos. 40/87, 119/93 and 120/93 are still pending for final hearing before this Court.

2. MR GD Bhatt, learned counsel for respondent No.1trust states that the trustees do not intend to demolish the shops or to remove the petitioners from their respective shops except in accordance with law and that the trustees shall await the decision in the above numbered appeals and that in case any further action is required to be taken in future, the same shall be taken in accordance with law.

3. Mr KT Dave, learned AGP appearing for respondent Nos. 3 and 4 also states that the said respondents do not propose to evict the petitioners from the suit shops and that it was only the unauthorized encroachments on public roads which were required to be removed by the authorities and that, therefore, the apprehension raised by the petitioners is not well founded.

4. As far as the impugned resolution dated 30.1.1999 of the Bahucharaji Gram Panchayat is concerned, if properly read, the resolution only means that the `dabano' (in Gujarati) that is, "the encroachments" are required to be removed. The persons who were lawfully inducted in the shops in question by the trustees of the trust cannot be said to be unauthorized encroachers when the Gram Panchayat does not claim ownership of the shops in question. Hence, the encroachment removal drive contemplated by the Gram Panchayat in the impugned resolution dated 30.1.1999 is not applicable to the shops occupied by the petitioners.

5. In view of the aforesaid observations and clarifications and the statements made on behalf of the respondents, nothing further survives in this petition and the petition is accordingly disposed of.

Rule is discharged. There shall be no order as to costs.

July 24, 2000 (M.S. Shah, J.)
sundar/-